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Some ABC's About Trusts and Us

*Robert A. Pascal**

There exists an active campaign to achieve what its proponents would call a "liberalization" of the Louisiana law of private trusts. To its champions the proposal is a suggestion that Louisiana abandon an unreasonable traditional opposition to that institution of Anglo-American law and catch up with a legal position conceived to be more desirable from the point of view of improving our law, attaining greater juridical uniformity with our sister states, and effecting tax savings. The writer does not feel that he is sufficiently informed at the time of this writing to judge the merits of the proposal. Certainly he is not opposed to law improvement, he thinks of himself as an advocate of the unification of law, and he does not relish paying taxes. But he does see that this formal proposal to "liberalize" the Louisiana law of trusts implies a radical substantive change in a number of the basic rules of the Louisiana civil law which were adopted originally with the view of effecting and thereafter preserving certain social policies. Whether these policies should be retained today is a matter which merits serious consideration and debate. It may be that they have served their purposes, or that their purposes should be sought no longer. On the other hand, if we wish to retain those policies, the drastic changes which are recommended should not be adopted, even if the uniformity of our law with that of other states and other less important desirables must continue to be sacrificed. The purpose of this article, then, is not to advocate or oppose the changes suggested, but to bring to light what the writer believes are some of the more important issues involved so that the decisions on them may be reached with full knowledge of what is being done.

I. THE JURIDICAL NATURE OF THE TRUST AND THE STRUCTURE OF THE CIVIL LAW

A preliminary observation is that while there had been and there perhaps still is opposition to Anglo-American trusts in Louisiana, there had not been any prohibition upon the legis-

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lature to provide for the trust in any of its forms or applications until 1921. The fact is that trusts for educational, charitable, and eleemosynary purposes have been provided for by legislation since 1882¹ and limited private express trusts were authorized under Act 107 of 1920. It was only in 1921 that a provision was inserted in the Constitution of the state forbidding the legislative adoption of private trusts except to certain stated limits.² Secondly, the single instance of legislation which was used as a basis for the conclusion that a trust could not be established in this state is Article 1520 of the Civil Code, which article, if properly construable by analogy to forbid certain uses of trusts, cannot be said to prohibit in and of itself the use of the trust for other purposes.³ It is an article referring to *substitutions* and *fidei commissa*, devices well known to the older Spanish law in force and effect in Louisiana before the adoption of the Civil Code of 1808.⁴ These were not of the same juridical structure as the Anglo-American trust, but they were devices for permitting a person to control the disposition of property even after it had passed to his heir or donee, thus permitting him to dictate for his heir or donee a special law of succession and alienability in place of that provided by law. This same object or purpose could be accomplished by the use of the trust or other Anglo-American devices, and, if the reason for forbidding substitutions and *fidei commissa* was to prevent the result, then by analogy the trust and the other Anglo-American devices could not be used to accomplish it; but that is not to say that a prohibition on substitutions and *fidei commissa* amounted in and of itself to a prohibition to use the trust for other purposes.

Thus the inability of one individual to control his heir's or donee's succession or right to dispose of property does not

1. La. Act 124 of 1882, an antecedent of La. R.S. 1950, 9:2271-2279.

2. The original Section 16 of Article 4, La. Constitution of 1921, permitted trusts for a period not longer than ten years after the settlor's death or ten years after the majority of the beneficiary, whichever was longer. The amendment by Act 208 of 1952 extends the possible period to the lifetime of the beneficiary or ten years after the death of the settlor, whichever is longer.

3. Art. 1520, La. Civil Code of 1870: "Substitutions and *fidei commissa*, are and remain prohibited.

"Every disposition by which the donee, the heir, or legatee is charged to preserve for or to return a thing to a third person is null, even with regard to the donee, the instituted heir or the legatee.

"In consequence of this article the trebellianic portion of the civil law, that is to say, the portion of the property of the testator, which the instituted heir had a right to detain, when he was charged with a *fidei commissa* or fiduciary bequest is no longer a part of our law."

4. Las Siete Partidas, Part. 6, Title 5.

stem from the fact that there is no provision in our law for the Anglo-American trust. The Spanish law recognized that ability, though it did not know the trust, and so was it with the older French law.⁵ Even today both the Spanish and French legislations, and indeed other "civil law" systems, admit of limited substitutions and *fidei commissa*.⁶ The reason, then, for the present limitations on attempts to control transfers of property beyond the grave is choice, or policy, legislative policy, not the mere absence of the trust from the civil law framework. To state the obvious, whether we want to permit such results is not a matter of trust or no trust, for the trust would be only one means to that end. The question is, do we want the results? Heretofore we have not desired them, being of the mind that the living and not the dead should have the most to say about what should be done with their property.

If Article 1520 does not of itself prohibit all trusts, and there was no other legislation prohibiting its use before the Constitution of 1921, can it be said that the device was prohibited at all? To this it should be answered that because of its juridical structure—a division of legal and equitable titles—it simply does not fit into the symmetry of our legal system any more than an armature for an electric motor would fit into a steam engine. There was really no room for dividing the legal and equitable ownership in property in our system and thus it would have been a violation of the *ordre publique* to recognize the validity of a trust. Persons may be permitted great freedom of action within the framework of the law, but their acts must be in harmony with its basic structure. Moreover, there was and is no need for the trust in the civil law to accomplish most of that which could and can be accomplished in Anglo-American law by the trust alone. As a single device to accomplish so many different purposes, the trust has no equal, but nearly everything which the trust can accomplish can be accomplished within the structure of a civil law system, the policies of the law permitting. Where something achievable with the trust is not achievable with the existing civil law, it is usually because the result is forbidden for reasons of social policy. One need only read the works of LePaulle to understand that this is true.⁷

5. See Pothier, *Traité des Substitutions*, 5 Oeuvres de Pothier 67 et seq. (Ed. Merlin 1831).

6. Arts. 1048, 1049, French Civil Code. See Comment, *Future Interests in French Law*, 3 *Louisiana Law Review* 795, 800-801 (1941). Arts. 775-778, Spanish Civil Code.

7. See, for example, LePaulle, *Civil Law Substitutes for Trusts*, 36 *Yale L.J.* 1126 (1927). See also Comment, *Future Interests in French Law*, 3 *LOUISIANA LAW REVIEW* 795 (1941).

The last observation has all the more force in Louisiana where, unlike in most other jurisdictions of the civil law, the Anglo-American legal background is anything but strange and where the bench and bar is possessed of such flexibility of mind that it scarcely ever seems aware that there is a difference between the two systems when it comes to solving a particular problem under the law. Indeed, whereas it had been said that the express trust was not an institution of our law, our judiciary occasionally saw no incongruity in finding a resulting or a constructive trust if that idea helped them achieve a result which they could not reach, or did not realize could be reached, under the civil law.⁸ There are instances in which the Supreme Court had gone to some pains to approve even express trusts because the objectionable elements of substitution and fidei commissum were considered in no way present. Such are the decisions in *Hope v. State Bank* (1832)⁹ and *Succession of Hill* (1857),¹⁰ in which the consent of all interested parties to the trust created in a will was considered to take it out from under the restriction of Article 1520; *Caldwell v. Hennen* (1843),¹¹ in which a trust arrangement created inter vivos was treated as valid against the heir by assimilating it to a type of irrevocable mandate; and *Mathurin v. Livaudais* (1827)¹² and *Succession of Cochrane* (1877),¹³ in which "naked" trusts to be executed immediately were considered outside the prohibition of Article 1520.¹⁴ The fact is that the Louisiana bench and bar has always known the Anglo-

8. *McClendon v. Bradford*, 42 La. Ann. 160, 7 So. 78 (1890); *Haynesville Oil Co., Inc. v. Beach*, 159 La. 615, 105 So. 790 (1925); *Sentell v. Richardson*, 211 La. 288, 29 So. 2d 852 (1947). The federal bench also has been guilty of inaccuracies in this regard. *Gaines v. Chew*, 43 U.S. 619 (1844) and *Porter v. Cooke*, 63 F. 2d 637 (5th Cir. 1933).

9. 4 La. 212.

10. 12 La. Ann. 767.

11. 5 Rob. 20.

12. 5 Mart. (N.S.) 301.

13. 29 La. Ann. 232.

14. Mixed feelings even toward the prohibited fidei commissum are in evidence in the several opinions rendered in *Breaux v. Breaux*, 218 La. 795, 51 So. 2d 73 (1950 and 1951). The evidence seemed clear that the deceased had willed property to the plaintiff with the oral understanding the plaintiff would transfer it to the defendant before she died. The plaintiff complied with the oral agreement, but later sought to annul the transfer on the ground the oral agreement could not have created an obligation on her part to transfer the property to the defendant and therefore the transfer was void for lack of cause. On rehearing the majority thought the agreement had created a natural if not a legal obligation and therefore the plaintiff could not allege the illegality of the cause of her transfer to the defendant, citing Louisiana Civil Code Article 1758 and so interpreting it as to arrive at this result. The writer regards the majority opinion as patently erroneous and therefore as evidencing all the more strongly the majority's sympathy for the prohibited substitution involved.

American trust as a device and had it felt a need for the institution it could have secured its legislative adoption with ease long before it did.

II. PRESENT POSSIBILITIES AND IMPOSSIBILITIES

The existing Louisiana legislation on private express trusts is contained in the Trusts Estates Act of 1938 as amended.¹⁵ In the opinion of the writer the primary features of the act are as follows:

1. Any interest in property may be placed in trust,¹⁶
2. By anyone who has a right to dispose of it by the kind of act through which he establishes the trust,¹⁷
3. In favor of anyone in existence at the time the act creative of the trust takes effect as a juridical act¹⁸ and
4. To whom he would have a right to transfer the property by the kind of act through which he establishes the trust,¹⁹
5. Until ten years after the death of the settlor or until the death of a natural person beneficiary, whichever is the longer period,²⁰
6. Subject to any conditions not amounting to the creation of a substitution or fidei commissum and not otherwise unlawful.²¹

Except to the extent indicated below no new interests in

15. La. R.S. 1950, 9:1791-2212.

16. La. R.S. 1950, 9:1861.

17. La. R.S. 1950, 9:1812-1816, 1861, cover generally the forms and kinds of acts by which trusts may be created. The right of a person to create a trust in a particular instance, however, may depend on his right under the general law to dispose of the property in question by the particular kind of act which he employs. A husband, for example, certainly could place his separate property in trust by donation or otherwise; but whereas he could transfer community immovables in trust for an adequate price, he could not transfer them in trust by way of donation.

18. La. R.S. 1950, 9:1902.

19. Again the general law must be considered to determine who may become the beneficiary of a trust established by the particular settlor. For example, under Louisiana Civil Code Article 1481 one cannot make a donation to his concubine; this being so, a trust by way of donation in favor of one's concubine would be invalid, but a trust created for a concubine in return for a price should not be invalid.

20. La. R.S. 1950, 9:1794, as amended by La. Act 209 of 1952. The original Section 9:1794 limited the duration of the trust period to ten years after the death of the settlor or the majority of the natural person beneficiary, whichever was longer. Under both the original and the amended section the trust may not last longer than ten years after the settlor's death if the beneficiary is not a natural person.

21. La. R.S. 1950, 9:1791, 1841, 1842.

property are created by the Trust Estates Act of 1938 as amended:

1. The trustee has *legal title* of the property in trust for the purposes of the trust and the beneficiary a *beneficial interest* which itself is freely transferable by the beneficiary except to the extent that it is made subject to spendthrift trust provisions;²²
2. A beneficiary's interest may consist of the trust principal only or of the interest only on the trust principal;²³
3. It may be possible, so long as the forced heirship laws are not violated, to allow the interest of a named beneficiary to be fixed at the discretion of the trustee or of a third person.²⁴

But otherwise a settlor may not through employment of a trust create any new interest or reach any result not allowed or attainable by the law without trusts. Thus the settlor, not being able to effect the following results without a trust, cannot effect them by using a trust:

- a. A transfer to two or more persons jointly with right of survivorship;
- b. A transfer to persons not in existence at the time the act translativ of property takes effect as a juridical act;
- c. A transfer to several persons successively in the form of shifting, springing, or executory interests;
- d. A transfer to persons nominated through another given a power of appointment.

III. SOME APPLICATIONS OF PRINCIPLES DISCUSSED

It is the writer's impression that even since the adoption of the Trust Estates Act in 1938 there has been little use of it except in connection with successions or donations inter vivos to reduce estate taxes. There must be few trusts for the benefit of a settlor. The trust as a security device in place of a mortgage or pledge (if possible) may be unknown. Nor do the sponsors of today's movement, it seems, have much interest in the private trust except in connection with the transmission of patrimonies, and their aims seem to be principally to extend its duration and open up possibilities of substitutions so as to make the use of the trust

22. La. R.S. 1950, 9:1811, 1921, 1923.

23. La. R.S. 1950, 9:1903.

24. La. R.S. 1950, 9:1923(C).

more attractive to those who desire to continue to control property after disposing it. The fact that the interest seems restricted to certain reforms or utilizations suggests that other reforms or utilizations are not needed. For the present, then, it will suffice to concentrate on the role of the trust in matters of successions.

Suppose Mr. *S* does not like the prospect of the property he may provide for a minor legatee being administered by a parent, guardian, or tutor, as would ordinarily be the case, because he does not have control over the nomination of the minor's representative or because he does not like what the law prescribes as to the manner in which such representatives must administer and invest the property of the minor. In any Anglo-American state, and since 1938 in Louisiana as well, Mr. *S* may place the property in trust for his legatee, specifically name the first and successor trustees *ad infinitum*,²⁵ and provide in great detail just how the property is to be administered and invested.²⁶ As to this property, then, Mr. *S* can be in some measure a dictator beyond his life span. Is this possible because of something inherent in trusts and in trusts alone? The inherently distinctive feature of a trust is the division between legal and beneficial title. Certainly this of itself has nothing to do with the issue. If either an Anglo-American state or Louisiana wanted to enact legislation to permit Mr. *S* to name special guardians or tutors *ad infinitum* for his legatees, or to permit him to specify the manner in which their regular representatives are to administer the property which he gives them, neither state would be embarrassed by the fact that guardians and tutors do not have "legal title" to the property of the minor. For an Anglo-American state, it may be said that its legislature never found it necessary to enact such laws because the trust method was available to persons who wanted to accomplish that result. For Louisiana it may be said that its legislature did not act until 1921 and 1938 because it did not desire to do so as a matter of policy (whether wise or not); and that when it did act it adopted the trust rather than change the law of tutorship (1) because the proponents of the legislation and the legislators themselves either deliberately preferred the trust device (for the sake of uniformity with other states, or because they preferred to enact a device already well developed in other places to developing one of their own), or (2) because they were reluctant to tamper with the law in the Civil

25. La. R.S. 1950, 9:1875.

26. La. R.S. 1950, 9:1941, 1991, 2061, 2091.

Code, or (3) because they did not realize the civil law could be so amended. Whatever the reason, the nature of the law of trusts as such has nothing to do with whether persons should be able to appoint tutors and dictate the manner in which the property which they transmit to a minor is to be administered and invested. This is a matter of legislative policy.

Now let us vary the problem. Suppose Mr. S is afraid his donee is not a normal child and that he will not be able to manage his affairs even after reaching the age of majority. He knows that in the United States there is a great reluctance to declare people incapable of managing their affairs in order that a curator might be appointed to them, and anyway he has the same objection to curators that he has to the guardians or tutors of minors. Again, in any Anglo-American state, and in Louisiana since 1952,²⁷ he may provide that the trust he establishes for the child is to last for his lifetime. Indeed, the beneficiary need not be a child and he need not suspect that he is in any way incapable of managing his affairs.²⁸ It is completely within his power under the law to deprive him of administration and control over his property during his entire life and, in Louisiana, to deprive him during his lifetime of all income from the estate over and above that which may be said to be produced by his forced share or legitime.²⁹ Whether we want this result or not is again a matter of policy choice; it has nothing to do with trusts, for by legislation persons could be given the power to restrict the rights of their donees in the property which they give them during their entire lives, and to place the administration and control of it in the hands of one selected by the donor or otherwise appointed. Up to 1938 the policy in Louisiana was to deprive majors of the right to manage their property for themselves only where they were not capable of so doing.³⁰ In 1938 the period during which the dead might control the property of their donees through the trust device was established at ten years after their majority or after the death of the settlor, whichever was longer.³¹ In 1952

27. La. R.S. 1950, 9:1794 as amended by La. Act 209 of 1952.

28. *Ibid.* The legislation places no restriction on this possibility.

29. La. R.S. 1950, 9:1793. In the Succession of Earhart, 220 La. 817, 57 So. 2d 695 (1952), the contention was made that Art. IV, Sec. 16, La. Const. of 1921, which authorizes the creation of trusts within the limits therein stated, does not authorize the creation of trusts on the forced portion or legitime. The court reached the conclusion that the contention was unfounded.

30. Except, of course, as expressed in La. Act 107 of 1920, repealed by La. Act 7 of 1935 (3 E.S.).

31. La. R.S. 1950, 9:1794, as it was before amendment by La. Act 209 of 1952.

the period was increased to the lifetime of the beneficiary who lives more than ten years after the settlor's death.

To extend our problem still more, let us suppose Mr. S has in mind the transfer of certain property to two or more donees and would like the survivor or survivors to have full ownership of the entire property whenever any should die. This is usually possible in Anglo-American jurisdictions, whether in connection with trusts or not, by making the donees joint tenants or beneficiaries with right of survivorship. Thus far this mode of disposition has not been permitted in Louisiana because it in fact involves a substitution and defeats the social policies of distributing the property of a deceased person to his heirs or legatees.³² But if the state formally decided it would be good policy to have joint interests with right of survivorship, there would be no doubt about Mr. S's right to employ this device in connection with a trust or otherwise.

Now let us say that Mr. S desires that his estate be kept together for the unborn children of his donees or other persons not yet in existence. In the usual Anglo-American state he can do that too; indeed, he can provide any distribution of his estate he wishes so long as (under the basic rule) what he orders will definitely either take or not take effect within twenty-one years after the death of any designated person living at the time of his disposition.³³ Of course, this violates two policies of our present civil law, that transferees of property should be in existence at the time an act translatif of property takes effect, and that once property vests in a person he shall not be denied the right to dispose of it or pass it on to his heirs. But again this has nothing to do with trusts, for Mr. S could provide for all this at common law without any trust whatsoever and we in Louisiana could change our law to make it possible with or without trusts.

Finally, let us say Mr. S would like to establish a trust and let a trustee or another decide who should receive the beneficial interest and to what extent. This would be possible under powers of appointment in Anglo-American law, but certainly con-

32. It should be noted that the Trust Estates Act expressly retains the prohibition against substitutions. La. R.S. 1950, 9:1791.

33. The reference is to the basic "rule against perpetuities" which "prohibits the creation of a future contingent interest unless, by the terms of its creation, the interest must vest within a life in being and twenty-one years." Tiffany, *Treatise on Real Property* § 268 (Abridged ed. 1940). Of course it has suffered various modifications in different jurisdictions.

trary to the Louisiana general policies against substitutions³⁴ and against willing through others.³⁵ Again it must be emphasized that nothing in the nature of trusts make such powers possible, for they exist outside of trusts in Anglo-American law and they have existed in the civil law. Indeed, our own Civil Code gives evidence to the fact it had been a custom to will property through others,³⁶ and there is still authorized in the Civil Code a very restricted form of power: the donor may reserve to himself the power, valid only for his lifetime, of disposing to another that which he has already given to one.³⁷ Similarly, the donor may reserve to himself the right of return of property given to another if he personally survives the donee and his descendants. These are substitutions, to be sure, particular exceptions to the general rule, whether they are called that or not, and the articles authorizing them may be inoperative since substitutions have been prohibited by the Constitution of 1921.³⁸ Yet the fact remains that they were part of our law until 1921 if they are not now, that the civil law itself is not an impediment to their existence, and that trusts are not the only means of making powers of appointment legal.

Thus it is that the present efforts of some to "liberalize" the Louisiana law of trusts do not involve trusts at all. They are rather efforts to change basic rules of law reflecting basic social policies. If these rules are to be changed at all, then the new rules should be stated as general propositions independent of the law of trusts, for there would seem to be no good reason to restrict the creation of the new interests in property—and that is what they would be—to the trust medium. If one is to be permitted to provide joint ownership with right of survivorship, executory interests, or powers of appointment, then why condition his creation of such interests to his use of a trust? As it is now, any interest which may be transferred to a particular

34. La. Const. of 1921, Art. IV, § 16; Art. 1520, La. Civil Code of 1870.

35. Art. 1573, La. Civil Code of 1870: "The custom of willing by testament, by the intervention of a commissary or attorney in fact is abolished.

"Thus the institution of heir and all other testamentary dispositions committed to the choice of a third person are null, even should that choice have been limited to a certain number of persons designated by the testator."

36. *Ibid.*

37. Art. 1531, La. Civil Code of 1870: "In case the donor has reserved to himself the liberty of disposing of any object comprised in the donation or of a stated sum on the property given, if he dies without having disposed of it, that object or sum shall belong to the heirs of the donor, any clause or stipulation to the contrary notwithstanding."

38. Art. IV, § 16, as amended pursuant to Act 208 of 1952.

person may be transferred subject to a trust. Decrease or increase the possibilities under the general law and automatically the law of trust will be narrowed or "liberalized." The important thing is for us to face the real issues squarely and to act after we know what we want.

IV. PURPOSES THAT MIGHT BE SERVED BY THE LEGALIZATION OF FUTURE INTERESTS

To deserve any consideration at all, a proposal to abandon any of our fundamental social policy rules, including our restrictions against future interests, should be based on an appreciation of the proposed change as one for the betterment of the welfare of the people in general. Such an appreciation can be made only after the most careful study by persons ready to guard against the identification of the interest of the public at large with their own personal advantage. As far as the writer knows, the arguments advanced in favor of the legalization of future interests through the trust device might be summarized as being that tax savings would result and that the increased uniformity between the local law and that of other states would facilitate the integration of the management and disposition of property situated in Louisiana and elsewhere. The writer does not believe he is sufficiently informed to judge whether these factors are or are not in the public interest, all things considered, but ventures some observations.

The suggestion that future interests might make possible substantial tax savings usually is made in reference to the federal gift and estate taxes. It is true that under the present federal legislation some tax savings can be secured by the employment of dispositions which in effect divide the total property interests in such a manner that, though a "second generation" will ultimately receive all the property and presently others have an immediate interest, there is in all under the substantive law but one disposition of the whole estate.³⁹ At present this possibility is open under Louisiana law by employment of the device of giving the usufruct in property to one group and the naked ownership thereof to another or by creating a trust and making one group the beneficiary of the income and the other the bene-

39. See Tarleau, *Estate Planning Technique*, 13 *LOUISIANA LAW REVIEW* 3, 13-17 (1952); Wisdom and Pigman, *Testamentary Propositions in Louisiana Estate Planning*, 26 *Tulane Law Review* 119, 128 (1952).

ficiary of the principal.⁴⁰ The big difference between what is possible in Louisiana and in other states is that in Louisiana all legatees or beneficiaries must be in being at the time the act of transfer takes juridical effect, whereas in most other states there may be valid dispositions in favor of persons not yet in existence. Thus the savings that might be realized by an adoption of future interests in Louisiana are only those which might be realized at the sacrifice of the firm policy against transfers in favor of persons not yet in existence. Besides, it is probable that Louisiana lawyers could reduce substantially the tax disadvantages which their clients now suffer by using to the utmost the tax-saving possibilities now available to them. Certainly it should be possible under the present law to dispose in terms of naked ownership and usufruct, or income and principal, to different persons, even if forced heirship is involved, so long as what the forced heir receives is of the proper value, whether in naked ownership or usufruct, principal or interest. Nothing in the legislation suggests that the legitime must be of certain kinds of interests in property; the language of the legislation indicates that a certain value fraction of the succession of a deceased person must go to his forced heirs, but nothing is said about whether that legitime must be in full ownership, usufruct, or otherwise.⁴¹

Uniformity of law among several jurisdictions is always desirable, as long as its value is not outweighed by other considerations. Certainly the counsellor's task is made easier both in the process of acquiring technical competence and in satisfying his clients with multiple state interests. The basic argument for uniformity in the present instance, however, seems to be that because the Louisiana laws do not permit the future interests that the laws of other states do, both domiciliaries and non-domiciliaries are placing their property in trusts established in other states. It is alleged that thus our laws are being avoided, even the immovable property escaping our laws through the device of transferring the immovables to a corporation in return for stock shares which then are placed in trust as movables. Perhaps this is so, and probably professional trustees are losing some trust business because of it. Nevertheless neither the

40. Wisdom and Pigman, *Testamentary Dispositions in Louisiana Estate Planning*, 26 *Tulane Law Review* 119, 135 (1952). The restrictions on the duration of the trust which, as mentioned by the authors, limited its usefulness as a tax-skipping device, have now been relaxed by La. Act 209 of 1952 amending La. R.S. 1950, 9:1794.

41. Arts. 1493-1495, La. Civil Code of 1870.

avoidance of our laws by some nor the loss of profitable business on the part of a few seems sufficient reason to change rules designed to effect accepted social ends. The probability is that the best interest of the public in general would not be well served. Besides, it may be that those creating trusts outside Louisiana do so as much for the purpose of evading our forced heirship laws as for other reasons. If so, it is doubtful that an acceptance of future interests without a rejection of forced heirship would accomplish very much, and it is at least doubtful we should abandon this institution, so democratic in spirit, merely because it is being evaded by a few.

V. ADVANTAGES FROM THE TRUST AS IT EXISTS TODAY

Neither the fact that the reforms sought in the adoption of the Trust Estates Act could have been achieved in a more civilian manner, nor the fact that the extension of the Louisiana law of future interests through trusts or otherwise probably would be inadvisable, should obscure the very real truth that our law has been enriched by the introduction of the trust. The Trust Estates Act does make it possible to achieve worthwhile purposes which would not have been achievable without it or other appropriate legislation. The most obvious instances have already been mentioned. The rigors of parental and tutorial control over minors' property often can be avoided through inter vivos or mortis causa transfers in trust for the minor, and the best interest of persons incapable of managing their affairs often can be protected better through the trust than through interdiction and curatorship as presently known. The trust may also be used to relieve the settlor or third party beneficiary of the worry of administration of property without the necessity of depriving him of the power to revoke the trust and obtain full personal control over the property.

Then there is no denying that the possibility of placing property in trust for principal and income, or naked ownership and usufruct beneficiaries, offers a tremendous advantage to those who would like to protect the ultimate beneficiaries more than is possible under the present law of usufruct. The trustee can be relied upon to act for the benefit of both, and even all security can be dispensed with without much fear of ultimate loss.

Finally, the trust as we now have it might perhaps be made to serve many non-administrative purposes. An outstanding

example would be the use of the trust as a security device in the place of a mortgage or pledge, the obligor transferring the property to a trustee to be (1) returned to himself, should he perform the principal obligation, or (2) sold and the proceeds applied to his debt, should he not perform the principal obligation. A similar use would be that of the ordinary escrow. Whether the use of the trust in place of present day security transactions is of advantage is a question to be answered largely on the basis of business routine and not on the basis of legal possibilities, but the possibilities at least bear investigation.